

# MEMORANDUM

**To:** Governing Board Members

**From:** Allen Vann, Inspector General

**Subject:** Report on Review of Site One Land Lease  
Request for Proposal - Report # 97-17

**Date:** September 10, 1997

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On August 14, 1997, we were requested by the Governing Board to perform a review of a dispute and pending protest of RFP C-8326, known as the Site One Land Lease. This report summarizes the results of our review.

## BACKGROUND

Site One is a parcel of land purchased by the District on December 13, 1996, located in Boca Raton bordering the north side of Loxahatchee Road and the east side of Water Conservation Area 1. The property contains approximately 1658 acres and was purchased with 50% Federal Farm Bill funds and 50% P-2000 funds. The purchase is part of the Everglades Buffer Strip project which will ultimately be converted into a 4 to 6 foot deep reservoir to enhance water supply.

The District's plans do not require use of most of the property for the next five years. The property is suited for agricultural and recreational uses. The property is also vulnerable to exotic plant growth. The Construction and Land Management Department (CLM) decided to solicit, through a Request For Proposal, a tenant that would maintain the property, control exotic plant growth, and provide the District with revenue to offset program costs.

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On May 1, 1997, the District issued a Request for Proposal (RFP)<sup>1</sup> to solicit parties interested in leasing the land for a five-year period with an additional five one-year options. Included in the RFP's Statement of Work was the following list of acceptable land uses:

- Cattle Grazing
- Farming
- Aquaculture (non-exotic fish)
- Recreational uses
- Research/Education projects
- Landscape Nursery

All interested parties were required to attend a pre-proposal conference to be eligible to submit proposals. Five firms submitted proposals that were opened on June 4, 1997. The proposals were scored by a four-member evaluation team based on the following criteria:

<b>Category</b>	<b>Maximum Points</b>
Technical Proposal	30
Qualifications & Experience	25
Financial	30
M/WBE	10
Previous Work w/District	5
Total	100

The results of the proposal evaluation scoring ranked the five firms as follows:

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<sup>1</sup> A Request for Proposal is a written solicitation for sealed competitive proposals with the title, date and hour of the public proposal opening date designated. A Request for Proposal is used when the District envisions the fulfillment of a need, and one of any number of methodologies may be applied to accomplish the result to the satisfaction of the District. The RFP Statement of Work is subject to negotiation following proposal opening.

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<b>Evaluator</b>	<b>DS Beaty Farms</b>	<b>Paula Brady</b>	<b>Florida Mowing &amp; Landscaping Services</b>	<b>Motchkavitz Engineering</b>	<b>Triple Ranch</b>
Evaluator 1	64	53	56	81	69
Evaluator 2	50	40	52	77	65
Evaluator 3	65	51	51	69	53
Evaluator 4	60	58	57	68	62
Total	239	202	216	295	249
<b>Rank</b>	<b>3</b>	<b>5</b>	<b>4</b>	<b>1</b>	<b>2</b>

Thus, the results of the proposal evaluation scoring ranked the five firms in the following order:

<u><b>Rank</b></u>	<u><b>Firm</b></u>
1	Motchkavitz Engineering, (Site 1 Partners)
2	Triple Ranch, Inc
3	DS Beaty Farms, Inc.
4	Florida Mowing and Landscape Services
5	Paula Brady

Motchkavitz Engineering was ranked number one primarily due to the fact that their revenue offer was substantially higher than all the others proposers. Revenues offered based on a ten year lease term for the original and the Best & Final offer proposals are summarized in the following table:

<b>Firm</b>	<b>Original</b>		<b>Best &amp; Final</b>		<b>Percent Change</b>	
	<b>Dollars</b>	<b>Points</b>	<b>Dollars</b>	<b>Points</b>	<b>Dollars</b>	<b>Points</b>
Triple Ranch	\$126,200	9	\$ 410,000	30	+225%	+233%
DS Beaty Farms	165,800	11	351,600	26	+112%	+136%
Motchkavitz Eng.	436,980	30	354,737	26	-19%	-13%

The District entered simultaneous negotiations with each of the top three ranked firms by a four-member negotiation team (separate and apart from the evaluation team). Upon completion of negotiations, which all occurred on the same day, an RFP Addendum was issued requesting best and final offers from the top three firms. All three submitted best and final offers that

were scored in a consistent manner by the same four-member evaluation team that scored the original submittal. The results of their evaluations are as follows:

<u>Rank</u>	<u>Firm</u>
1	Triple Ranch, Inc.
2	DS Beaty Farms, Inc.
3	Motchkavitz Engineering, (Site 1 Partners)

Motchkavitz Engineering protested the Intent to Award Contract to Triple Ranch, Inc. At the Governing Board Workshop on August 14, 1997, they made allegations that District staff acted illegally, fraudulently, arbitrarily, and in collusion with parties of Triple Ranch to change the ranking from the original scoring to the best and final offer scoring.

The ultimate action taken by the District was rejection of all proposals based on the fact that there were ambiguities in the RFP, the District's needs had changed, and clarifications were needed from the United States Department of Interior regarding acceptable interim property uses. Motchkavitz Engineering then protested the rejection of all proposals.

On September 2, 1997, Motchkavitz Engineering provided documentation and information it obtained from the District and other sources to the Inspector General's Office. In a cover letter, the firm requested on its behalf and on behalf of the other parties of Site One partners group, that this information be covered under the Whistle Blower's Act.

## **SCOPE**

The scope of our review entailed examining the propriety of the procurement process for RFP C-8326, Site One Land Lease. The primary objective of the audit was to reconstruct the sequence of events based on factual evidence to assess whether District staff acted properly in the solicitation process. The scope also entailed investigating the factuality of certain allegations as to fraud and collusion made by the protesting party.

## **METHODOLOGY**

Our methodology consisted of reviewing documents from District files as well as those obtained from external parties. We also interviewed all employees who were involved in the procurement process. Interviews were also conducted with the top three firms that submitted proposals.

## **FINDINGS AND RECOMMENDATIONS**

### **Potentially Tainted RFP Process**

Parties to the Triple Ranch proposal approached District staff prior to the RFP solicitation. However, we found no evidence to indicate that this prejudiced the procurement process. District staff met with principals of the proposer, Triple Ranch, prior to purchasing the land and held subsequent discussions. District staff made visits with the parties to the Triple Ranch proposal to the site. The site was also surveyed by District staff and the parties to the Triple Ranch proposal using the District's helicopter. Although there was contact prior to the RFP that certainly created a perception problem, a competitive process was used, an RFP was developed with broad ranges of uses that were not tailored to any specific party, and was advertised and open to the general public.

A diverse four-member evaluation team, selected in accordance with the District's normal procedures, scored the proposals. There is no evidence that any team member showed favoritism to any firm. They unanimously indicated that they functioned in an environment where they were totally objective and never felt any pressure to favor a particular proposal.

However, we did find that one of the evaluation team members, the Director of Land Stewardship, had contacts with Triple Ranch parties prior to the RFP relating to the site. He indicated that he believed that this did not impair his objectivity. However, this evaluator ranked Triple Ranch ahead of the other proposers both in the first and second round of technical, qualifications and experience ratings.

### **Recommendations**

1. To prevent negative perceptions, employees who have previously had discussions with a firm interested in entering a contractual arrangement prior to an RFP solicitation should eschew themselves from being involved in the evaluation of proposals for such project. Similarly, contracts with prospective proposers should be limited wherever possible and when such contacts are unavoidable; they should be fully disclosed to all prospective proposers.

### **Request for Proposal (RFP) Specifications Insufficient**

After opening the proposals, District personnel found that there were problems with the original RFP. They concluded that the RFP did not contain certain critical information.

- After the proposals were opened, CLM learned that the Planning Department's short-term plans for the property had changed and needed 80 acres of the property for research activities, and occasional access to the entire parcel to perform geotechnical tests. Thus, any proposed uses would need to accommodate these requirements. While staff in the Planning Department informed CLM in advance to lease the entire property, they were not involved in establishing the scope of work for the RFP, nor were they offered an opportunity to review and comment on the RFP prior to issuance.
- The proposal did not indicate that all proposed changes in interim land use require approval by the United States Department of Interior (DOI). The District's plans were to submit the number one ranked firm's proposal to the DOI for review and approval. The RFP also did not address what process would be invoked if the DOI rejected some or all the firms' proposed uses.

Despite these problems with the RFP, District staff chose not to cancel the RFP but rather to continue with the process.

## **Recommendations**

We recommend the following:

2. The Procurement and Contracts Division should ensure that all knowledgeable parties should be involved in preparation of RFP statements of work, or at minimum, be offered an opportunity to review and comment on RFPs.
3. Prior to commencing RFP preparations, departments should clarify scope of work with outside parties having oversight authority, and at minimum be offered an opportunity to review and comment on the proposal.

## **Improvements Needed In Proposal Evaluation Scoring System**

We noted that the technical scoring of the proposal by the evaluation team fell into a very narrow pattern despite obvious differences in the proposals received. Proposal evaluation categories were sometimes interpreted differently by members of the evaluation team. Also, there should be some guidance regarding what should be expected from a proposal to earn the maximum points and conditions where zero points should be given. For example: one scoring category for this RFP was "Public Use." Some evaluators took this to mean that they were to evaluate whether a firm proposed recreational activities that would be open to the general public. Another interpreted it to mean whether the proposed activities were a good use of public land. However, evaluators that had the recreational interpretation still gave some points to a proposal that did not include any recreational activities.

A quantitative method should be used for any categories where such approach can feasibly be used. For this RFP, a quantitative approach would have been more appropriate in scoring in-kind services. None of the

evaluators considered the market value of services in terms of cost saving to the District when scoring in-kind services. The scores also demonstrate that evaluators did not consider the fact that some proposals offered to perform in-kind services as a credit against lease revenues while others offered to perform them for free.

When proposers approve a project, they usually take a total cost approach. They are calculating what their total out-of-pocket expenses for the venture are going to be, including both direct payments to the District, plus what it will cost them to provide the in-kind services they offered to perform. In our analysis, the failure to take full account of in-kind services explains the significant variations in the scores for the revenue category when evaluating the original proposals.

Using a subjective approach tends to reward weaker proposals and penalizes stronger proposals when scoring in-kind services. A quantitative approach would have provided a more objective and more accurate method for evaluating in-kind services.

### **Recommendations**

4. Descriptions should be developed for scoring categories to assist evaluators in viewing them in a more consistent manner. Also, consideration should be given to developing criteria of what is expected of a proposal to receive the maximum score and conditions where few or no points should be awarded. Such criteria would enhance the objectivity for scoring technical and qualification aspects of proposals.
5. The method for scoring in-kind services should be performed in a manner similar to that used for revenues based on the amount of cost savings to the District. Assistance should be obtained from District employees who have expertise in procuring the type of services offered (e.g. Vegetation Management Division for exotic plant control).



**Successful Use of Simultaneous  
Best and Final Offers Constrained  
By Public Records Law**

After the original proposals were scored, the Director of Construction and Land Management (CLM) raised concern as to why the top ranked firm's revenues were substantially higher than all the others, and questioned whether there was something wrong with the scoring criteria regarding how the points were allocated among categories. Additionally, there were concerns about the aforementioned shortcomings in the scope of work.

Based on the above concerns, District staff considered rejecting all proposals. In the interest of not delaying the project further and not losing the time already invested in the solicitation, the decision was made to proceed. The former Director of Procurement and Contracts authorized negotiation be held with the top 3 firms, in an attempt to negotiate scope changes due to the issues omitted from the RFP. Upon completion of the negotiation sessions, a request for best and final offers from the firms would be requested. The intention to hold simultaneous negotiations with the three top firms and request best and final offers was not communicated to respondents in the original RFP. This midcourse change in methodology did not represent the usual method that the District uses for awarding RFPs.

Individual negotiation sessions were scheduled with each firm and all were held on the same day, July 23, 1997. These negotiation sessions, in effect, were really meetings to orally discuss the proposals and clarify with each firm land uses the Department of Interior would likely approve or reject. The only negotiating that was actually done was that of addressing the issues omitted from the RFP (i.e. 80 acres, DOI, etc.). All three firms were also informed that the District would be requesting best and final offers.

A four-member team held the negotiation sessions. None of the proposal evaluators were on the negotiation team. In interviews with the four negotiation team members, all three firms were provided with the same information, taken from a script prepared and read by the Contract Administrator. According to the District's negotiation team, all three firms agreed to the modifications in the scope of work and all agreed to submit

best and final offers. However, there was no record of negotiations for us to review except a few handwritten notes taken by the Contract Administrator.

Proposers were counseled by the negotiating team on the acceptability, or lack of acceptability, of land uses in their original proposals based on the team's understanding of what would be acceptable to the Department of Interior. As a result, Motchkavitz Engineering deleted certain items from their proposal and Triple Ranch added new items to its proposal. Motchkavitz Engineering represented to us that they vehemently objected to the best and final offer concept. Thus, there are conflicting representations regarding this fact. There was no recording or minutes prepared of the negotiation sessions. [It should be noted that Motchkavitz Engineering and Triple Ranch had requested to see all their competitors proposals pursuant to the Public Records Law in which proposals become public records after notice of a decision is made or 10 days whichever is earlier.]

As indicated in the background section, Triple Ranch was ranked number one based on the best and final offers. The changes in the ranking from the scoring of the original proposals to the scoring of the best and final offers were due to changes in the amount of revenue offered to the District. The revenue category scores were determined based on a quantitative formula applied consistently in both proposal scorings. There were only minimal changes in the technical and qualification categories where a more judgmental method is used in scoring proposals.

We found that the methodology used of requesting best and final offers for RFP C-8326 did not violate State laws or District policies or rules. Other governments do use the process; however, the District is inherently limited in its ability to implement the concept successfully due to the Public Records Law, which provides competitors access to one another's proposals. The Federal Government cautions its contracting officers in the following excerpts from the Federal Acquisitions Regulations (FAR) Subpart 15.610 to avoid the following activities when using the RFP method of procurement (bolding added for emphasis):

- (d) The contracting officer and other Government personnel involved shall not engage in technical **leveling** (i.e., helping an offeror to bring its proposal up to the level of other proposals

through successive rounds of discussion, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal).

(e) **The following conduct may constitute prohibited conduct** under section 27 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), and Subpart 3.104 to which civil and criminal penalties and administrative remedies apply.

(1) Technical transfusion (i.e., Government disclosure of technical information pertaining to a proposal that results in improvement of a competing proposal); or

(2) **Auction techniques, such as -**

**(i) Indicating to an offeror a cost or price that it must meet to obtain further consideration;**

**(ii) Advising an offeror of its price standing relative to another offeror (however, it is permissible to inform an offeror that its cost or price is considered by the Government to be too high or unrealistic); and**

**(iii) Otherwise furnishing information about other offerors' prices.**

The National Association of State Purchasing Officials in their publication entitled State and Local Government Purchasing provides the following guidance on the topic of RFPs:

The RFP should provide that, after the proposals are opened, each may be discussed with its proposers if the purchaser deems it advantageous. In this context, "discussion" would include not only the opportunity for clarification to assure full understanding of and responsiveness to the solicitation requirements, but also the opportunity for modification and negotiation. When discussions are conducted, all proposers whose submissions are found to be acceptable or reasonably susceptible to being made acceptable must be given equal opportunity to negotiate and revise their proposals. **No information from a competing proposal may be revealed to another competitor during the course of discussion. Law or rule should prohibit any type of auction**

**practice or the transfer of technical information, which undermines fair competition.**

While we found no evidence that District staff in any way engaged in leveling or auctioning, the Florida Public Records Law requirements that District staff must provide competing firms with information about their proposals creates a defacto situation, which essentially produced the same effect.

In order for the concept to be used in a fair and equitable manner, the entire process, from proposal opening to submission of best and final offers, would have to be completed within a 10 day period. Although this is not totally impossible, it is improbable. Also, with the inherent uncertainty of not knowing the number of proposals that may be received, it is not possible to commit to such a stringent time frame in advance. The concept does have merit in that it has the potential to enhance competition, which may result in the District obtaining better value for the taxpayers.

### **Recommendations**

6. Due to the Public Records Law, when using an RFP procurement, the District should only engage in sequential rather than simultaneous negotiations similar to requirements under the Florida Consultants' Competitive Negotiation Act (CCNA) that relates to the procurement through the RFP process for professional services from architects, professional engineers, landscape architects and registered land surveyors.
7. Proposal selection process should be fully explained in the RFP.
8. The District should consider adopting a practice of recording meetings with contractors such as negotiation sessions, pre-bid/proposal meeting, etc. This would provide a means of verifying what was communicated in situations where disagreements arise.

**Rent Free Tenancy of Current  
Site One Occupant**

One of the proposers is a holdover tenant from the previous owner of the land. Motchkavitz Engineering complained that the District was providing the tenant with rent free occupancy of the land and thereby showed favoritism to this proposer.

Since the Site One land was purchased using Federal Farm Bill money, the existing tenant is eligible for relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. They are entitled to actual reasonable cost of relocating or can elect to receive a fixed fee, based on a formula, up to a maximum of \$20,000. The tenant was paying the former property owners \$13,000 annually (paid at \$1,083.33 per month) under a grazing lease for the eastern 1200 acres (total site is 1658 acres). CLM permitted the tenant to remain on the property rent-free for six months in exchange for maintaining the property and keeping it in active use. Six months was considered sufficient time to solicit an RFP and have a new lease agreement in place. The existing tenant desires to remain on the property and expressed to the District that they intended on submitting a proposal when the RFP was issued.

According to CLM, the rationale for permitting the tenant to remain on the property rent-free is based on relocation assistance regulations in the U.S. Army Corp of Engineers Real Estate Regulations. These regulations allow (but not require) the District to permit the existing owner or tenant to continue to occupy the property up to 12 months. The District commonly made similar accommodations on the land purchased for the Kissimmee River Restoration project. Thus, this was not a special arrangement made for purposes of favoring this particular tenant/proposer.

If the current tenant won the RFP, the District would have spent money to move them off the property, and then they would have to move back on. In the mean time, the land would be inactive and the District could be responsible for maintenance.

The six month's free rent arrangement was not mandated by any legislation or regulations by the Federal Government, and the District could

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have negotiated with the tenant to pay a reasonable amount of rent during the interim period. We have no recommendation to offer regarding this issue.

c: Samuel E. Poole  
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